



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner
March 16, 2004

Glenn Peters
PO Box 674
Farmington, NH 03835

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 04-014
NOTICE OF STOP USE ORDER–NSUO#04-01**

RE: FARMINGTON, WAGON WHEEL STORE, EXISTING UNDERGROUND STORAGE TANK
FACILITY (UST #A-0114590) (DES #198906041)

Dear Mr. Peters:

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at Route 11, Farmington, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities and the New Hampshire Code of Administrative Rules Env-A 1205, regulating Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Cargo Trucks. On November 17, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Therefore, according to RSA 125-C:15, I-a the dispensing of fuel from this UST facility must stop. The requirements of Env-A 1205.19 must be satisfied within 90 days of this letter, by June 13, 2004. Also, failure to achieve compliance with the following Env-Wm 1401 deficiencies within 90 days from the date of this “Notice” will result in revocation of your Permit-to-Operate on June 13, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES was unable to determine that the overfill protection devices for the UST containing regular gasoline was installed at the required 90% alert or 95% shut off level. Also, it was determined that the overfill device for the UST containing super gasoline was no installed at the required 90% alert or 95% shut off level. Verification in writing that all of the overfill protection devices for both USTs are installed at the required 90% alert or 95% shut off level shall be submitted to DES.

2. Env-Wm 1401.30 Release Detection for Piping

Env-Wm 1401.30 requires line leak detectors to be installed on all pressurized piping systems and tested annually to confirm that they are operating according to manufacturer’s recommendations. Env-1401.30 also requires records be maintained for line leak detector tests. DES has determined that a passing annual line leak detector test had not been performed for any of the line leak detectors. A passing test for each line leak detector shall be provided to DES.

3. Env-A 1205.19 Applicability of Stage II Requirements

Env-A 1205.19 requires that Stage II requirements shall be applicable to the owner of any gasoline dispensing facility located in Hillsborough, Merrimack, Rockingham, or Strafford

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3644 • Fax: (603) 271-2181 • TDD Access: Relay NH 1-800-735-2964

DES Web site: www.des.nh.gov

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION NCPR # 04-014
NOTICE OF STOP USE ORDER-NSUO#04-01

March 16, 2004

Page 2 of 4

County and whose construction of the gasoline dispensing facility was begun after November 15, 1990, regardless of the amount of throughput. This facility was installed and its use authorized in 1994. Therefore, a CARB-certified Stage II system shall be installed at this facility. A Stage II notification form shall be provided to DES at least 5 days prior to construction/installation of the Stage II system.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit # 0114590) shall be revoked effective **June 13, 2004**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly. **However, such request must be submitted in writing at least 20 days following receipt of this letter.**

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**


You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

4

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-014
NOTICE OF STOP USE ORDER–NSUO#04-01
March 16, 2004
Page 3 of 4

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,


COPY
Lynn A. Woodard, P.E.
Supervisor
Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0584 4639

cc: Michael P. Nolin, Commissioner
Mark Harbaugh, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Farmington